

Professionalism Commission Minutes, June 1, 2005

Judge Battaglia called the meeting to order at 4:00 p.m. Absentees included: R. Baldwin, D. Braden, W. Jones, Judge Legg, M. O'Connor, D. Potter, D. Seidman, D. Walters, B. Warnken. The minutes from the April Meeting were approved with corrections.

Dana Williams' subcommittee on discovery abuse presented written recommendations (*see* Recommendations to the Professionalism Commission from the Subcommittee on Discovery Abuse Issues, Including the Use of Discovery Masters). The subcommittee felt strongly that the Court of Appeals must specifically identify and address the problem of discovery abuse. Remedies must be tailored to each county, subject to recommendations of the respective administrative judges, taking into account the resources available. Any recommendations should be presented to Judge William D. Missouri, chair of the Circuit Court Judges Conference. Judge Battaglia will check with the Rules Committee to see what can be done to strengthen the "Discovery Guidelines" found already as a preamble to the discovery section of the Rules.

Judge Sweeney pointed out that the staff of the Business and Technology Case Management Program publishes opinions of Circuit Court Judges to its web site. The same could be done with discovery opinions, in order to provide a body of predictive information at the trial court level. Contact person would be David Durfee.

The use of special masters seems to offer a swift resolution of discovery disputes. Montgomery County has such a program. Questions include whether appearance before a Master will be mandatory before taking up the issue with a Judge and who will pay the cost. Judge Battaglia will take this up with Judge Missouri and with Gerry Martin, Chair of the MSBA Ethics Committee.

The Subcommittee on Discovery Abuse will work toward a final report and recommendation.

Dan Saunders' Subcommittee presented a report: Professionalism Guidelines and Sanctions for Use by Judges. The primary question to be decided, before the Commission can go further on this topic, is whether the Professionalism Guidelines (or whatever the document eventually gets named) should be mandatory. It is the Subcommittee's strong recommendation that professionalism and civility guidelines be mandatory. Because of the importance of this threshold decision, Judge Battaglia determined that the entire July meeting of the Commission be given over to a discussion of this question.

Judge Dennis M. Sweeney's comments on the creation of Behavior Review Panels are contained in his memorandum to the Commission, which was distributed to all before and during the meeting. Judge Sweeney's memorandum raises serious questions

concerning the administration and feasibility of such a review system. The Saunders Subcommittee will take Judge Sweeney's comments into consideration.

Judge Jeannie Hong presented the First Interim Report on the Subcommittee on the Judges' Role in the Bar and with Communities. See Report.

Judge James P. Salmon presented the Subcommittee Report on Mentoring.

Linda Lamone presented the Final Report of the Subcommittee on the Unauthorized Practice of Law. In essence, the Subcommittee recommends no changes to the UPL statute. UPL should be prosecuted (by the Office of the Attorney General or, as has been the case, the Attorney Grievance Commission). Prosecution must be with certain caveats having to do with potential anti-trust problems and public perception that the profession may be more interested in turf protection than protection of the public. No one wants to be a complainant in such cases, but perhaps the MSBA could fill the role. Additional suggestions include the need for public education with regard to the value of legal representation. Realtors are doing this sort of education and their campaign could be an idea.

Judge Battaglia had to leave early. Norman Smith chaired the remainder of the meeting, which adjourned at 6:00 p.m.

Various Subcommittee Reports will be made a part of these minutes.